IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	Joseph Phillip Bigus	:	Date: July 18, 2011
Group Art Unit:	3691	:	IBM Corporation
Examiner:	Olabode Akintola	:	Intellectual Property Law
Serial No.:	09/238,821	:	Dept. 917, Bldg. 006-1
Filed:	January 28, 1999	:	3605 Highway 52 North
Title:	VEHICLE-BASED ORDER ENTRY AND PROCESSING MECHANISM	:	Rochester, MN 55901

Commissioner for Patents
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APPEAL BRIEF IN SUPPORT OF APPEAL
FROM THE PRIMARY EXAMINER TO THE BOARD OF APPEALS
(SECOND APPEAL)

Sir:

This is an appeal of a rejection dated December 13, 2010 of claims 1-15, 17-19, 24-26, 28-38, 40-42 and 46-53 of Application Serial No. 09/238,821, filed January 28, 1999. This brief is submitted pursuant to a Notice of Appeal filed March 18, 2011, as required by 37 C.F.R. §41.31.

1. Real Party in Interest

International Business Machines Corporation of Armonk, NY, is the real party in interest. The inventor assigned his interest as recorded on January 28, 1999, on Reel 9759, Frame 0043.

2. Related Appeals and Interferences

There are no related appeals nor interferences pending with this application.

3. Status of Claims

Claims 1-15, 17-19, 24-26, 28-38, 40-42, and 46 and 48-53 are pending and stand rejected, and are on appeal herein. Claims 16, 20-23, 27, 39, 43-45 and 47 are cancelled. The claims on appeal are set forth in the Appendix of Claims.

4. Status of Amendments

An Amendment after Notice of Appeal under 37 C.F.R. 41.33 was filed on July 17, 2011 for purposes of reducing issues on appeal. The Amendment has not yet been entered.[1]

5. Summary of Claimed Subject Matter

The invention herein relates to a restaurant ordering system which interacts with mobile digital devices of customers. Independent claims 1, 24, 46, and 51 recite respectively a method, program product, apparatus and apparatus for a server which transmits menu/item information and/or receives order information. Independent claims 11, 34, 50 and 52 recite respectively a method, program product, customer device and

[1] Appellant expects that the amendment will be entered in due course, since it merely resolves an indefiniteness issue under 35 U.S.C. 112, second paragraph, but there has not been enough time since filing of the Amendment for the Examiner to act.

customer device for a device which receives menu/item information and/or transmits order information. The following subject matter is claimed.[2]

In accordance with claim 1, a method for servicing a customer is carried out by a first computer system [Specification p. 4, lines 2-7; p. 6, lines 3-10; Fig. 1, feature 100]. Item information comprising information about available items is transmitted from the first computer system as a first wireless transmission, and retransmitted from the first computer system as a second wireless transmission [Specification p. 4, lines 2-6; p.7, lines 18-19; p. 11, line 23 - p. 12, line 7; Fig. 3]. The first computer system receives order information from a second computer system, the order information comprising at least one user-selected item from the item information [Specification p. 4, lines 6-7; p. 12, lines 13-20; p. 13, lines 19-23; Fig. 5]. The second computer system is moved by the customer from a first position not within range of the first wireless transmission to a second position within range of the first wireless transmission, the information being received after the customer device is moved to the second position [Specification p. 4, lines 4-6; p. 12, lines 9-11]. The information is not received as a result of a request from the second computer system [Specification p. 4, lines 4-7; p. 11, line 23 - p. 12, line 20; p. 13, lines 21-22].

In accordance with claim 11, a method for servicing a customer is carried out by a customer device [Specification p. 4, lines 2-7; p. 8, lines 10-16; p. 9, lines 12-19; Fig. 2, feature 200]. A menu comprising available items is received at the customer device via a

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[2] In the summary of claimed subject matter herein, appellant has cited selective portions of the specification and drawing showing each recited limitation in compliance with 37 C.F.R. 41.67(v). However, the fact that selective portions of the specification are referenced should not be construed to mean that support for the claimed limitations can not be found in other portions of the specification, or that other portions of the specification are not relevant or are less relevant to the disclosure of the invention herein.

retransmitted wireless transmission, the retransmitted wireless transmission being transmitted by a server following a previous wireless transmission [Specification p. 4, lines 2-6; p.7, lines 18-19; p. 11, line 23 - p. 12, line 11; Fig. 3, Fig. 4, block 400]. The menu is displayed via the customer device after receipt of the retransmitted wireless transmission [Specification p. 4, lines 6-7; p. 12, lines 7-14; Fig. 4, block 410]. Receipt of the retransmitted wireless transmission by the customer device occurs after the customer device is moved by the customer from a first position not within range of the previous wireless transmission to a second position within range of the retransmitted wireless transmission [Specification p. 4, lines 4-6; p. 12, lines 9-11]. The menu is not displayed as a result of a request from the customer device [Specification p. 4, lines 4-7; p. 11, line 23 - p. 12, line 20]. Order information is transmitted from the customer device to the server [Specification p. 4, lines 6-7; p. 12, lines 18-20].

In accordance with claim 24, a computer program product comprises a recordable signal bearing medium and one or more programs stored thereon [Specification p. 10, lines 14-25]. Item information comprising information about available items is transmitted as a first wireless transmission, and retransmitted as a second wireless transmission [Specification p. 4, lines 2-6; p.7, lines 18-19; p. 11, line 23 - p. 12, line 7; Fig. 3]. Order information is received from a customer device, the order information comprising at least one user-selected item from the item information [Specification p. 4, lines 6-7; p. 12, lines 13-20; p. 13, lines 19-23; Fig. 5]. The customer device is moved by the customer from a first position not within range of the first wireless transmission to a second position within range of the first wireless transmission, the information being received after the customer device is moved to the second position [Specification p. 4, lines 4-6; p. 12, lines 9-11]. The order information is not received as a result of a request

by the customer device [Specification p. 4, lines 4-7; p. 11, line 23 - p. 12, line 20; p. 13, lines 21-22].

In accordance with claim 34, a computer program product comprises a recordable signal bearing medium and one or more programs stored thereon [Specification p. 10, lines 14-25]. A menu comprising available items is received at the customer device via a retransmitted wireless transmission, the retransmitted wireless transmission being transmitted by a server computer system following a previous wireless transmission [Specification p. 4, lines 2-6; p.7, lines 18-19; p. 11, line 23 - p. 12, line 11; Fig. 3, Fig. 4, block 400]. The menu is displayed via the customer device after receipt of the retransmitted wireless transmission [Specification p. 4, lines 6-7; p. 12, lines 7-14; Fig. 4, block 410]. Receipt of the retransmitted wireless transmission by the customer device occurs after the customer device is moved by the customer from a first position not within range of the previous wireless transmission to a second position within range of the retransmitted wireless transmission [Specification p. 4, lines 4-6; p. 12, lines 9-11]. The menu is not displayed as a result of a request from the customer device [Specification p. 4, lines 4-7; p. 11, line 23 - p. 12, line 20]. Order information is transmitted from the customer device to the server [Specification p. 4, lines 6-7; p. 12, lines 18-20].

In accordance with claim 46, an apparatus for servicing a customer comprises a processor and a memory connected to the processor [Specification p. 6, lines 3-10; Fig. 1, features 100, 105, 135]. The apparatus further comprises a mechanism for repeatedly transmitting information about available items via a wireless transmission [Specification p. 4, lines 2-6; p.7, lines 18-19; p. 11, line 23 - p. 12, line 7; Fig 1, feature 160; Fig. 3]. The wireless transmission is received by a customer device that is moved by a user from an out of range location to a location within range of the wireless transmission

[Specification p. 4, lines 4-6; p. 12, lines 9-11]. The information about available items is thereupon displayed without having been requested by the customer device [Specification p. 4, lines 4-7; p. 11, line 23 - p. 12, line 14].

In accordance with claim 50, a customer device comprises a processor and a memory connected to the processor [Specification p. 8, lines 10-16; p. 9, lines 12-19; Fig. 2, features 200, 205, 235]. The customer device further comprises a mechanism for receiving a repeatedly transmitted wireless transmission regarding information about available items [Specification p. 4, lines 2-6; p. 11, line 23 - p. 12, line 17; Fig. 2, features 255, 260; Fig. 4]. The transmission is received when the customer device occurs is moved by a customer from an out of range location to a location that is within range of the transmission [Specification p. 4, lines 4-6; p. 12, lines 9-11]. The transmission is not received as a result of a request from the customer device [Specification p. 4, lines 4-7; p. 11, line 23 - p. 12, line 11]. The customer device further comprises a mechanism for displaying the information [Specification p. 12, lines 8-14; Fig. 2, feature 255; Fig. 4, block 410]. The customer device further comprises a mechanism for transmitting order information, the order information being based upon the information about available items [Specification p. 4, lines 6-7; p. 12, lines 13-20; Fig. 2, features 255, 260; Fig. 4].

In accordance with claim 51, an apparatus for servicing a customer comprises a processor and a memory connected to the processor [Specification p. 6, lines 3-10; Fig. 1, features 100, 105, 135]. The apparatus further comprises a mechanism for repeatedly transmitting a menu via a wireless transmission, the menu being designed to be received by a customer device [Specification p. 4, lines 2-6; p.7, lines 18-19; p. 11, line 23 - p. 12, line 11; Fig 1, features 155, 157, 160; Fig. 3]. The apparatus further comprises a mechanism for receiving order information from the customer device, the order

information being generated based on the menu [Specification p. 4, lines 6-7; p. 12, lines 13-20; p. 13, lines 19-23; Fig. 1, features 155, 159, 160; Fig. 5].

In accordance with claim 52, a customer device comprises a processor and a memory connected to the processor [Specification p. 8, lines 10-16; p. 9, lines 12-19; Fig. 2, features 200, 205, 235]. The customer device further comprises a mechanism for receiving a repeatedly transmitted wireless transmission regarding a menu [Specification p. 4, lines 2-6; p. 11, line 23 - p. 12, line 17; Fig. 2, features 255, 260; Fig. 4]. The transmission is received when in range of the transmission, but not when outside of the range of the transmission and not as the result of a request for the menu [Specification p. 4, lines 4-6; p. 11, line 23 - page 12, line 11]. The customer device further comprises a mechanism for displaying the menu [Specification p. 12, lines 8-14; Fig. 2, feature 255; Fig. 4, block 410]. The customer device further comprises a mechanism for transmitting order information, the order information being based upon information about available items [Specification p. 4, lines 6-7; p. 12, lines 13-20; Fig. 2, features 255, 260; Fig. 4].

6. Grounds of Rejection To Be Reviewed on Appeal

Claims 1-10 are rejected under 35 U.S.C. §112, second paragraph, as indefinite. Claims 1-4, 9, 11-13, 18, 24-26, 32, 34-36, 41, 46, and 48-53 are rejected under 35 U.S.C. §102(e) as anticipated by Dowling et al. (U.S. Patent 6,522,875). Claims 5-8, 10, 14, 15, 17, 19, 28-31, 33, 37, 38, 40 and 42 are rejected under 35 U.S.C. §103(a) as unpatentable over *Dowling*. The only issues in this appeal are whether the claims are

either anticipated by or prima facie obvious over *Dowling*, and secondarily, whether claims 1-10 are indefinite.[3]

7. Argument

Appellant contends that the Examiner failed to establish adequate grounds of rejection for the following reasons:

I(A). The Examiner improperly rejected claims 2, 11-13, 18, 25, 34-36, 41, and 51-53 under 35 U.S.C. §102(e) because *Dowling* does not disclose key claim limitations, specifically the repeated transmission of a menu and the transmission of an order. [page 10 below].

I(B). The Examiner improperly rejected claims 1-4, 9, 24-26, 32, 50, and 53 under 35 U.S.C. §102(e) because *Dowling* does not disclose key claim limitations, specifically the repeated transmission of available item information and the transmission of an order [page 16 below].

I(C). The Examiner improperly rejected claims 46, 48, 49, and 53 under 35 U.S.C. §102(e) because *Dowling* does not disclose key claim limitations, specifically the repeated transmission of available item information [page 18 below].

I(D). Claims 1-4, 9, 11-13, 18, 24-26, 32, 34-36, 41, 46, and 48-53 are not obvious over *Dowling* under 35 U.S.C. §103(a), because under a correct interpretation of the claims, there is no suggestion or obvious rationale in *Dowling* for the significant claim limitations [page 19 below].

II(A). The Examiner improperly rejected claims 5, 14, 28, and 37 under 35 U.S.C. §103(a) as obvious over *Dowling* for the reasons stated in Part I, and additionally because transmission of payment information would not have been obvious in the context of *Dowling* [page 19 below]

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[3] Appellant filed an amendment after Notice of Appeal to resolve the indefiniteness issue. If entered, only the prior art issues will remain.

II(B). The Examiner improperly rejected claims 6, 10, 15, 19, 29, 33, 38, and 42 under 35 U.S.C. §103(a) as obvious over *Dowling* for the reasons stated in Part I, and additionally because transmission of vehicle identification information would not have been obvious in the context of *Dowling* [page 20 below]

II(C). The Examiner improperly rejected claims 7, 8, 17, 30, 31, and 40 under 35 U.S.C. §103(a) as obvious over *Dowling* for the reasons stated in Part I, and additionally because transaction verification would not have been obvious in the context of *Dowling* [page 21 below]

III. The Examiner improperly rejected claims 1-10 under 35 U.S.C. §112, second paragraph, as indefinite [page 22 below].

Overview of Invention

A brief overview of appellant's invention in light of existing art will be helpful in appreciating the issues herein. Appellant's invention is intended to provide a new and useful technique for ordering food items in a restaurant, particularly intended for use in a "fast food" type restaurant having a drive-through window. Conventionally, at a drive-through station a customer views a visually displayed menu and orders items via an intercom. There are certain disadvantages to this approach. Often, the customer can not see the menu until his/her car is at the intercom station, so that valuable time is lost while the customer reads the menu. Furthermore, due to the poor sound quality of some intercom stations and/or the high level of ambient noise, it is often difficult for either customer or restaurant employee to hear and understand what the other is saying, so that valuable time is again lost in repeating information or correcting erroneous order information. Finally, only one customer can order at a time, which severely limits throughput. The operation of the entire restaurant can be affected by the speed at which customers can order at the drive-through station.

Appellant addresses these shortcomings by disclosing a system whereby a customer can receive the menu in and submit an order via a portable digital device having wireless transmission capability. In accordance with appellant's preferred embodiment, the menu is repeatedly broadcast by the restaurant via a short range wireless transmission. The disclosed preferred wireless transmission protocol is "Bluetooth", although other protocols would be possible. Upon a customer's vehicle coming within range (e.g., entering the parking lot), the customer's portable digital device will receive the broadcast and display menu information to the customer, without the need for the customer device to request menu information from an external source. The customer then makes his/her menu selections, and submits an order via the same wireless transmission medium to a server in the restaurant, which processes the order, e.g. verifies correct selections and payment information, displays the selected items to restaurant personnel for preparation, displays vehicle information for matching of the order with the correct vehicle in the drive-through line, etc.

Appellants' disclosure is therefore directed to a ***restaurant ordering process***, and it must be understood that the context of words and phrases used in the Specification and Claims is that of a ***restaurant ordering system***. In particular, the words "menu", "item" and "order", as used in the claims, have their normal and customary meaning ***in the context of a restaurant ordering system***.

I(A). The Examiner improperly rejected claims 2, 11-13, 18, 25, 34-36, 41, and 51-53 under 35 U.S.C. §102(e) because *Dowling* does not disclose key claim limitations, specifically the repeated transmission of a menu and the transmission of an order.

In order to support a rejection for anticipation, each and every element of the claimed invention must be shown in a single prior art reference. Appellant's claims 2, 11-13, 18, 25, 34-36, 41, 51 and 52 are not anticipated by *Dowling* because *Dowling* does not disclose, inter alia, ***repetitive wireless transmission of a menu*** which is received by a portable customer device when the device comes in range, i.e. without request from the customer device, and transmission of an ***order*** from the customer device back to the source of the menu transmission.

Appellant's representative independent claim 11 recites:

> 11. A method for servicing a customer, said method being carried out by a customer device and comprising the steps of:
>
> *receiving a menu at said customer device via a retransmitted wireless transmission*, said menu comprising available items, said retransmitted wireless transmission having been transmitted by a server computer system subsequent to transmitting at least one previous wireless transmission;
>
> displaying said menu via a customer device subsequent to receipt by said customer device of said retransmitted wireless transmission, said *receipt by said customer device of said retransmitted wireless transmission occurring after said customer device is moved by a customer from a first position to a second position, wherein said first position is not within range of said at least one previous wireless transmission and wherein said second position is within range of said retransmitted wireless transmission, said menu not being displayed as the result of a request from said customer device*; and
>
> *transmitting order information from said customer device to said server computer system.* [emphasis added]

Independent claims 34, 51 and 52, as well as dependent claims 2 and 25, although not identical in scope, all recite the repetitive wireless transmission of a ***menu*** to the

customer device so that ***the customer receives it without requesting it upon entering range of the transmission***, and transmission of an ***order*** back to the source.

Dowling discloses a geographical web browser contained in a mobile system, such as a dashboard computer of an automobile. The mobile system receives local broadcast signals and/or contains a global positioning system (GPS), to identify its location. The mobile system displays web pages to the user which correspond to its current physical location. In one disclosed embodiment, a local broadcast transmitter transmits locally significant URLs. Upon the receipt of the URLs, the mobile system can request and download a corresponding web page. In one example, the URLs of local restaurants can be broadcast on the local transmitter, and the mobile system downloads the restaurants' web pages.

As appellant understands the rejection of claim 11, the Examiner apparently deems *Dowling*'s local broadcast of URLs to be the recited repetitive wireless transmission of a "menu". Furthermore, the Examiner apparently deems *Dowling*'s request to download the web page using the URL to be the recited "order". Appellant challenges the rejection on both points.

Words are used within a context. Many words in the English language have multiple meanings, but when such a word is used in a particular sentence, it assumes only one of those multiple meanings, and not all of them. The appropriate meaning of the word is determined by the context in which it is used.

The are multiple meanings for the ordinary English word "menu". An exemplary dictionary entry follows:

> **menu** *n.* **1.** a list of the dishes served at a meal; bill of fare: *Ask the waiter for a menu.* **2.** the dishes served. **3.** any list or set of items, activities, etc., from which to choose: *What's on the menu this weekend–golf, tennis, swimming?* **4.** *Computers.* a list of options available to a user, as displayed on a CRT or other type of screen.[4]

Appellant's specification plainly describes a ***restaurant ordering system***. In such a context, it is clear that "menu" is used in the ordinary sense of definition 1 above, i.e., the primary sense in which the word is used in everyday English. It was error to use it in any other sense.

Appellant is not asking that limitations from the specification be imported into the claims. Appellant is only asking that a word that is used repeatedly in the specification and claims to mean an ordinary, everyday article, be given its ordinary English meaning in the context in which it is used, i.e. in the context of a restaurant. If a person is at a restaurant and asks for a "menu", without any further clarification as to which of the above meanings is intended, is the waiter really going to ask what type of menu the patron wants? The intended meaning is understood, beyond any doubt, ***by the context*** in which the request is made. By the same token, there can be no doubt about the meaning of the word "menu" in appellant's claims, given that the context of the specification and claims is that of a ***restaurant ordering system***.

With that understanding in mind, it is clear that *Dowling* does not disclose repeatedly transmitting the "menu". The only thing which is repeatedly transmitted in *Dowling* is a URL. A URL, in and of itself, is not a restaurant "menu", regardless of what the URL might be used to access through downloading or surfing.

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[4] Webster's New Universal Unabridged Dictionary (Barnes & Noble 2003).

It is possible that the URL will be used to request a web page, which in turn may contain a restaurant's menu. But in this case, the menu is downloaded from the Internet (a medium of essentially unlimited range) after a specific request, and is not obtained from a local wireless transmission of limited range which is repeatedly broadcast.

The Examiner's read is even more tortured when the limitation of transmitting an "order" is considered. The Examiner reads the request to download the web page using the URL as an "order".

Although the ordinary English word "order" contains numerous definitions, none of them fits the action performed in *Dowling*, i.e., transmitting a request to download a web page from a server using a URL. However, in the context of ordering food in a restaurant, the word is well known and has a well established meaning:

> **order** *n*. . . . **14.** a direction or commission to make, provide or furnish something: *The salesclerk will take your order*. **15.** a quantity of goods or items purchase or sold: *The druggist is sending the order right over....*[5]

Clearly, appellant's claims use "order" in the sense of an order of available food items from a restaurant.

The use of the Internet has acquired its own terminology, and it does not include the word "order" as applied by the Examiner, i.e., a request to download a web page. This is commonly referred to as a "request for a web page", but may alternatively be referred to as a "link to a web page", a "click on a web page", or something similar. One does not "transmit an order for a web page"; the word is simply not used in that sense among Internet users. In the field of Internet usage, "order" as a noun typically means a

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[5] Webster's New Universal Unabridged Dictionary (Barnes & Noble 2003). The word "order" as a noun contains no fewer than 46 definitions, which are omitted for brevity.

transaction to purchase something on-line. This in fact is very close to appellant's usage, and is completely inconsistent with the usage of the Examiner.

Although the word "order" has many meanings, it is a common, ordinary English word, and is not in ordinary usage applied to a request to download a web page. It is, however, in ordinary everyday usage, as well as in appellant's specification, applied to a direction to prepare specific food items in a restaurant for purchase by the customer. Appellant only asks that the word be given this ordinary meaning, consistent with the specification, rather than some contorted meaning which is outside the norm of Internet users.

With the essential context of a ***restaurant ordering system*** in mind, appellant reviews the essential limitations of claim 11 in comparison to *Dowling*.

Claim 11 recites that a customer device receives a "menu", i.e. a restaurant's bill of fare, which is repeatedly transmitted via wireless by a server computer system. *Dowling* doesn't do this, it repeatedly transmits a URL.

Claim 11 recites that the menu is displayed on the customer device when the customer comes within range of the wireless transmission, without a request from the customer. *Dowling* doesn't do this. Instead, the customer may request download of a web page using the URL. The web page could contain a restaurant menu, but it is downloaded responsive to the request, and it is downloaded via an independent, unlimited range, transmission path, different from the one used for local limited range transmission of the URL.

Finally, claim 11 recites that the customer device transmits an order to the server, i.e., the same server which transmitted the menu. *Dowling* doesn't do this. *Dowling* doesn't disclose any form of "order" being transmitted, but only a request for a web page. The web page is requested via the Internet, i.e., a transmission medium of essentially unlimited range. *Dowling*'s device which broadcasts URLs is just a local broadcast station, and does not receive anything, and specifically does not receive orders for restaurant food.

For all of the reasons stated above, key limitations of claim 11 and others are not disclosed by *Dowling*, and the rejections of claims 2, 11-13, 18, 25, 34-36, 41, 51, and 52 for anticipation were erroneous.

I(B). The Examiner improperly rejected claims 1-4, 9, 24-26, 32, 50, and 53 under 35 U.S.C. §102(e) because *Dowling* does not disclose key claim limitations, specifically the repeated transmission of available item information and the transmission of an order

Claims 1-4, 9, 24-26, 32, and 50 are not anticipated by *Dowling* for reasons similar to those stated above in Part I(A). However, these claims refer to the transmission of "information about available items" instead of the transmission of a "menu", and are therefore addressed separately herein.

Representative claim 1 recites:

1. A method for servicing a customer, said method being carried out by a first computer system and comprising the steps of:

transmitting, from said first computer system, item information, *said item information comprising information about available items*, said item information being transmitted as a first wireless transmission;

retransmitting, from said first computer system, said *item information about said available items*, said item information being retransmitted as a second wireless transmission; and

receiving at said first computer system order information from at least a second computer system, said order information comprising at least one user-selected item from said item information, said second computer system being moved by a customer from a first position to a second position, wherein said first position is not within range of said first wireless transmission and wherein said second position is within range of said second wireless transmission, *said information being received after said customer device is moved to said second position, said information not being received as a result of a request from said second computer system.* [emphasis added]

Although the word "item", standing in isolation, could mean almost anything, the word does not stand in isolation. What is repeatedly transmitted is "item information ... about available items". As explained above in Part I, the context of the specification is one of a ***restaurant ordering system***. In the context of a restaurant ordering system, "available items" refers to items from the restaurant's menu which are "available" for purchase and comsumption.

As explained above in Part I(A), *Dowling* discloses the transmission of URLs by a local transmitter. A URL is not an "available item" in the context of the claim, i.e. something available for purchase from a restaurant. At best, it is a reference which enables one to obtain the information about "available items", but this is only possible after downloading the information from a separate medium (the Internet) responsive to a specific request. The claim clearly recites that no specific request is needed to obtain the "information about available items", and that it is obtained simply by coming within range of the wireless transmission.

As explained in Part I(A) above, *Dowling* does not disclose transmission of an "order". An "order" in the context of the claim is an order for specific items of food on the restaurant's menu. This usage is consistent with the specification and common ordinary usage of the word. The Examiner reads the "order" to be a request to download a web page from the Internet. For the reasons explained in Part 1(A) above, this is a tortured and erroneous reading of the applicable claim limitation.

For all the reasons stated above, when the applicable claim limitations are properly interpreted, *Dowling* fails to disclose one or more limitations, and the Examiner's rejections of claims 1-44, 9, 24-26, 32, and 50 were erroneous.

I(C). The Examiner improperly rejected claims 46, 48, 49 and 53 under 35 U.S.C. §102(e) because *Dowling* does not disclose key claim limitations, specifically the repeated transmission of available item information.

Independent claim 46 is similar to claim 1 discussed in Part I(B) above in that it recites the repeated wireless transmission of information about available menu items, but unlike claim 1 does not explicitly recite transmitting an order back to the server.

For reasons explained above in Part I(B), *Dowling* does not disclose the repeated wireless transmission of "information about available items", i.e. "available" for purchase from a restaurant, wherein the information is received and displayed in the customer device without the customer requesting it. *Dowling* discloses repeated transmission of a URL, but the menu item information is only available after using the URL to download additional information from a separate medium. Therefore claim 46 is not anticipated by *Dowling*, and the rejection of claim 46 (and dependent claims 48, 49 and 53) were erroneous.

I(D). Claims 1-4, 9, 11-13, 18, 24-26, 32, 34-36, 41, 46, and 48-53 are not obvious over *Dowling* under 35 U.S.C. §103(a), because under a correct interpretation of the claims, there is no suggestion or obvious rationale in *Dowling* for the significant claim limitations. [6]

Appellant has explained in detail above why the independent claims are not anticipated by *Dowling*. Fundamentally, the Examiner is erroneously construing a URL as the recited "menu" or "information about available items", and the request to download a web page as the recited "order". Appellant's terms "menu", "available items", and "order" are in the context of a restaurant ordering system, and do not mean just arbitrary data passed over the Internet or other network.

Given the correct interpretation of the claim limitations, as explained in Parts I(A), I(B) and I(C) above, there is nothing in *Dowling* which discloses or suggests a restaurant ordering system whereby the menu or available item information is transmitted wirelessly over a limited range, automatically received by the customer device for display without requesting it, and/or a customer order is submitted back to the server based on that information. Accordingly, the claims are not obvious over *Dowling*.

II(A). The Examiner improperly rejected claims 5, 14, 28, and 37 under 35 U.S.C. §103(a) as obvious over *Dowling* for the reasons stated in Part I, and additionally because transmission of payment information would not have been obvious in the context of *Dowling*.

Claims 5, 14, 28 and 37 are dependent on claims 1, 11, 24, and 34, respectively and are patentable for the reasons stated in Part I above.

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[6] Generally, a rejection for anticipation under 35 U.S.C. §102 may be deemed to include an implied or "subsumed" single reference rejection for obviousness under 35 U.S.C. §103. The subsumed obviousness rejection is addressed here.

These dependent claims recite additionally that the order information includes payment information. Although conceding that this is not disclosed by *Dowling*, the Examiner finds that it would have been an obvious modification

In so holding, the Examiner is glossing over his own reading of "order" and using appellant's own disclosure. It may indeed be obvious for an "order" to include payment information, if the order is in the context of a restaurant ordering system, as disclosed in appellant's specification. ***But what Dowling discloses is not a restaurant ordering ssytem: Dowling discloses using a URL to download a web page from the Internet.***

Let's assume arguendo that appellant's recited "order" can be read on *Dowling*'s download of a web page using a URL, which appellant does not concede for the reasons stated in Part I above. Why indeed would one submit payment information with a URL in order to download a web page? The web page is advertising, which the advertiser wishes to offer free of charge. Such a modification of *Dowling* makes no sense whatsoever, and appellant submits that it is the antithesis of obviousness.

II(B). The Examiner improperly rejected claims 6, 10, 15, 19, 29, 33, 38, and 42 under 35 U.S.C. §103(a) as obvious over *Dowling* for the reasons stated in Part I, and additionally because transmission of vehicle identification information would not have been obvious in the context of *Dowling*.

Claims 6, 10, 15, 19, 29, 33, 38 and 42 are dependent on either claim 1, 11, 24, or 34, and are patentable for the reasons stated in Part I above.

These dependent claims recite additionally that the order information includes vehicle identification information. Although conceding that this is not disclosed by *Dowling*, the Examiner finds that it would have been an obvious modification.

The Examiner's argument is flawed for the same reasons stated in Part II(A) above. The Examiner is applying an obviousness test to what is disclosed in appellant's specification rather than what is disclosed in the reference.

Dowling does not disclose a restaurant ordering system, but using a URL to download a web page from the Internet. Why on earth would a client submit a vehicle identification number along with the URL to a web server on the Internet? The web server can't possibly use that information to route the web page. It simply makes no sense.

It only makes sense to submit a vehicle identification number in the context of a restaurant ordering system, in which the "order" is not a request for a web page, but a food order from a restaurant which must be matched to the correct vehicle. Such a system is not disclosed or suggested by *Dowling*.

II(C). The Examiner improperly rejected claims 7, 8, 17, 30, 31, and 40 under 35 U.S.C. §103(a) as obvious over *Dowling* for the reasons stated in Part I, and additionally because transaction verification would not have been obvious in the context of *Dowling*.

Claims 7, 8, 17, 30, 31 and 40 are dependent on claims either claim 1, 11, 24, or 34, and are patentable for the reasons stated in Part I above.

These dependent claims recite additionally that the order information is validated, and either accepted or rejected by the server. The Examiner takes "Official Notice" that these concepts are well known.

Again, the Examiner's argument is flawed for the same reasons stated in Parts II(A) and II(B) above. Validating an order may be known or obvious in the context of restaurant ordering, but *Dowling* discloses requesting a web page.

The Examiner is reading *Dowling*'s request for a web page as the "order" What is there to validate when one requests a publicly available web page? *Dowling* discloses that the URL is broadcast to any automobile that comes within range of a local broadcast station, e.g., an automobile cruising down the highway. It is in the nature of an advertisement. The web server is simply going to provide the requested web page responsive to receiving the URL. There is nothing to validate, and no obvious motivation or suggestion is shown for validation of an order.

III. The Examiner improperly rejected claims 1-10 under 35 U.S.C. §112, second paragraph, as indefinite.

Claims 1-10 were rejected as indefinite because claim refers at lines 14 and 15 to "said information". Appellant had filed an Amendment after Notice of Appeal to resolve this issue, but in the event that Amendment is not entered, appellant addresses the indefiniteness issue as follows.

Claim 1 recites in part:

1. A method ... comprising the steps of:
   transmitting, from said first computer system, item information ...
   retransmitting, from said first computer system, said item information ...
   receiving at said first computer system order information ... *said information being received* after said customer device is moved to said second position, *said information not being received* as a result of a request from said second computer system. [emphasis added]

The Examiner takes the position that "said information" is ambiguous, because it could refer alternatively to the previously recited "item information" or to the previously recited "order information". However, if the claim is read as a whole, it will be observed that the "item information" is ***transmitted*** from the first computer system, while the "order information" is ***received*** in the first computer system. The subsequent reference to "said information" is a qualifier on the step of "***receiving*** ... order information", and therefore can only refer to the "order information", since that is the only information being received. Accordingly, the claim is sufficiently definite.

8. Summary

Appellant discloses and claims a novel and unobvious restaurant ordering system, in which a menu is transmitted by a restaurant's server via limited range wireless, is received in a customer device without requesting it when the customer device comes within range of the transmission, is automatically displayed to the customer on the customer device, and the customer is enabled to transmit an order back to the server. This provides an improvement to the well-known drive-through ordering systems. *Dowling*, the only reference cited herein, discloses broadcast of URLs on a local transmitter, which when received in a mobile device can be used to access the corresponding web page on the Internet using a different access medium. For the reasons explained herein, *Dowling*'s URL is not a "menu" or "information about available items", and *Dowling*'s request to download a web page is not an "order", as recited in appellant's claims. This and various other limitations are neither disclosed nor rendered obvious by the cited art.

For all the reasons stated herein, the rejections for anticipation and obviousness were improper, and appellant respectfully requests that the Examiner's rejections of the claims be reversed.

Date: July 18, 2011

Respectfully submitted,

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APPENDIX OF CLAIMS

1. A method for servicing a customer, said method being carried out by a first computer system and comprising the steps of:

transmitting, from said first computer system, item information, said item information comprising information about available items, said item information being transmitted as a first wireless transmission;

retransmitting, from said first computer system, said item information about said available items, said item information being retransmitted as a second wireless transmission; and

receiving at said first computer system order information from at least a second computer system, said order information comprising at least one user-selected item from said item information, said second computer system being moved by a customer from a first position to a second position, wherein said first position is not within range of said first wireless transmission and wherein said second position is within range of said second wireless transmission, said information being received after said customer device is moved to said second position, said information not being received as a result of a request from said second computer system.

2. The method of claim 1 wherein said item information is embodied as a menu.

3. The method of claim 1 including the step of displaying said item information.

4. The method of claim 1 wherein said first computer system is embodied as a server computer system and wherein said second computer system is embodied as a customer device.

5. The method of claim 1 wherein said order information includes payment information.

6. The method of claim 1 wherein said order information includes vehicle identification information.

7. The method of claim 1 further including the steps of:

validating said order information;

accepting said order information when said order information is valid; and

rejecting said order information when said order information is not valid.

8. The method of claim 7 further including the steps of:

transmitting acceptance information to said client device when said order is valid; and

transmitting error information to said client device when said order is not valid.

9. The method of claim 1 including the step of displaying said order information.

10. The method of claim 6 including the step of displaying said vehicle identification information.

11. A method for servicing a customer, said method being carried out by a customer device and comprising the steps of:

receiving a menu at said customer device via a retransmitted wireless transmission, said menu comprising available items, said retransmitted wireless transmission having been transmitted by a server computer system subsequent to transmitting at least one previous wireless transmission;

displaying said menu via a customer device subsequent to receipt by said customer device of said retransmitted wireless transmission, said receipt by said customer device of said retransmitted wireless transmission occurring after said customer device is moved by a customer from a first position to a second position, wherein said first position is not within range of said at least one previous wireless transmission and wherein said second position is within range of said retransmitted wireless transmission, said menu not being displayed as the result of a request from said customer device; and

transmitting order information from said customer device to said server computer system.

12. The method of claim 11 wherein said menu is repeatedly transmitted such that repeated wireless transmissions result and wherein said repeated wireless transmissions comprise said at least one previous wireless transmission and said retransmitted wireless transmission.

13. The method of claim 11 wherein said order information includes user selection information regarding said available items.

14. The method of claim 11 wherein said order information includes payment information.

15. The method of claim 11 wherein said order information includes vehicle identification information.

16. (Cancelled)

17. The method of claim 11 further including the steps of:

receiving acceptance information at said client device after said server computer system determines that said order is valid; and

receiving error information at said client device after said server computer system determines that said order is not valid.

18. The method of claim 11 including the step of displaying said order information.

19. The method of claim 15 including the step of displaying said vehicle identification information.

20 - 23. (Cancelled)

24. A program product, said program product comprising:

a recordable signal bearing medium; and

one or more programs stored on said recordable signal bearing medium, said one or more programs being configured to perform the following steps:

transmitting information about available items as a first wireless transmission;

retransmitting said information about available items as a second wireless transmission; and

receiving order information from at least one customer device, said order information comprising at least one user-selected item from said available items, said customer device being moved by a customer from a first position to a second position, wherein said first position is not within range of said first wireless transmission and wherein said second position is within range of said second wireless transmission, said order information being received after said customer device is moved to said second position, said order information not being received as the result of a request by said customer device.

25. The program product of claim 24 wherein said information about available items is a menu.

26. The program product of claim 24 wherein said one or more programs are further configured to perform the step of displaying said information about available items.

27. (Cancelled)

28. The program product of claim 24 wherein said order information includes payment information.

29. The program product of claim 24 wherein said order information includes vehicle identification information.

30. The program product of claim 24 wherein said one or more programs are further configured to perform the steps of:

validating said order information;

accepting said order information when said order information is valid; and

rejecting said order information when said order information is not valid.

31. The program product of claim 30 wherein said one or more programs are further configured to perform the steps of:

transmitting acceptance information to said client device when said order is valid; and

transmitting error information to said client device when said order is not valid.

32. The program product of claim 24 wherein said one or more programs are further configured to perform the step of displaying said order information.

33. The program product of claim 29 wherein said one or more programs are further configured to perform the step of displaying said vehicle identification information.

34. A program product for servicing a customer, said program product comprising:

signal bearing media; and

one or more programs disposed on said signal bearing media, said one or more programs being configured to perform the steps of:

receiving a menu at said customer device via a retransmitted wireless transmission, said menu comprising available items, said retransmitted wireless transmission having been transmitted by a server computer system subsequent to transmitting at least one previous wireless transmission;

displaying said menu via a customer device subsequent to receipt by said customer device of said retransmitted wireless transmission, said receipt by said customer device of said retransmitted wireless transmission occurring after said customer device is moved by a customer from a first position to a second position, wherein said first position is not within range of said at least one previous wireless transmission and wherein said second position is within range of said retransmitted wireless transmission, said menu not being displayed as the result of a request from said customer device; and

transmitting order information from said customer device to said server computer system.

35. The program product of claim 34 wherein said menu is repeatedly transmitted such that repeated wireless transmissions result and wherein said repeated wireless transmissions comprise said at least one previous wireless transmission and said retransmitted wireless transmission.

36. The program product of claim 34 wherein said order information includes user selection information regarding said available items.

37. The program product of claim 34 wherein said order information includes payment information.

38. The program product of claim 34 wherein said order information includes vehicle identification information.

39. (Cancelled)

40. The program product of claim 34 wherein said one or more programs are further configured to perform the steps of:

receiving acceptance information at said client device after it is determined that said order is valid; and

receiving error information at said client device after it is determined that said order is not valid.

41. The program product of claim 34 wherein said one or more programs are further configured to perform the steps of displaying said order information.

42. The program product of claim 38 wherein said one or more programs are further configured to perform the steps of displaying said vehicle identification information.

43 - 45. (Cancelled)

46. An apparatus for servicing a customer, said apparatus comprising:

a processor;

memory connected to said processor; and

a mechanism for repeatedly transmitting information about available items via a wireless transmission, said wireless transmission being received by a customer device that is moved from an out of range location to a location that is within range of said wireless transmission by a user and wherein said information about available items is thereupon displayed without having been requested by said customer device.

47. (Cancelled)

48. The apparatus of claim 46 wherein said information about available items is a menu.

49. The apparatus of claim 46 further including a mechanism for receiving order information from said customer device.

50. A customer device, said customer device comprising:

a processor;

memory connected to said processor;

a mechanism for receiving a repeatedly transmitted wireless transmission regarding information about available items, said transmission being received when said customer device is moved from an out of range location to a location that is within range of said transmission by a customer, said transmission not being received as the result of a request from said customer device;

a mechanism for displaying said information; and

a mechanism for transmitting order information, said order information being based upon said information about available items.

51. An apparatus for servicing a customer, said apparatus comprising:

a processor;

memory connected to said processor;

a mechanism for repeatedly transmitting a menu via a wireless transmission wherein said wireless transmission is designed to be received by a customer device; and

a mechanism for receiving order information from said customer device, said order information being generated based upon said menu.

52. A customer device, said customer device comprising:

a processor;

memory connected to said processor;

a mechanism for receiving a repeatedly transmitted wireless transmission regarding a menu, said transmission being received when in range of said transmission, but not when outside of said range of said transmission and not as the result of a request for said menu;

a mechanism for displaying said menu; and

a mechanism for transmitting order information, said order information being based upon said information about available items.

53. The mechanism of claims 46 and 50-52 in which said mechanism is a suitably configured program stored in said memory.

APPENDIX OF EVIDENCE

No evidence is submitted.

APPENDIX OF RELATED PROCEEDINGS

There are no related proceedings.